

## Brentwood Board of Adjustment Minutes August 10, 2020

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Members present: Chairman Ken Christiansen; Vice Chair Doug Cowie; Bruce Stevens; Andy Artimovich; Bob Gilbert.

Also Present: Alternate, Daphne Woss.

Christiansen opened the meeting at 7:00 pm. The Board introduced themselves.

**7:00 pm:** Applicant: George Lagassa requests an appeal from the Planning Board's decision granting conditional approval for a commercial development with a drive-thru restaurant at 154 Crawley Falls Road, tax map 217.122.000, within the Town Center district; Article III, Section 300.002.004 of the Brentwood Zoning Ordinance.

Present: Applicant George Lagassa. Abutters Present: Jonathan Frizzell; Bill and Linda Dow of Brentwood Country Store (Lindy's); Furmer Lattime; Jana Eoll; Peter Tufts; Resident Doug Finan.

Lagassa read from his four-page testimony that was prepared for the Board appealing the Planning Board's conditional approval for Shane McKeen's property at 154 Crawley Falls Road, allowing a drive thru restaurant, granted on 6-18-2020 (on file and attached).

Artimovich asked Lagassa do you agree that a restaurant is permissible in the Town Center Zone? Lagassa replied yes but it's within the purview of the Planning Boards authority to impose limits on that and a drive thru restaurant is not appropriate and is incompatible with the intent of the Town Center District.

Christiansen opened it up to abutter comments. Tufts lives in the house that Lagassa owns and was concerned about this development endangering the children that live in that district. Lattime expressed concern regarding a comment from a member of the Planning Board at the Planning Board meeting about looking into the zoning before you purchase property and if you don't like it move. He didn't feel that was a way to treat people purchasing property in the community. Christiansen commented that that individual spoke for himself and wasn't speaking for the Board. Eoll would like to see commercial development there for some tax relief but her only issue was the drive thru. There are six children under the age of 11 within 100 yards of that development; it's a very pedestrian issue. She had no other concerns as long as the drive thru is removed. Finan spoke as a resident and in full disclosure, is a member of the Planning Board and is not representing the Planning Board but himself. The Town Center is mixed use and he doesn't understand why we should restrict any business from having a drive-up window, especially during this time with Covid. Having a drive-up window keeps the customers safe. If a business is not supported by the community, the owner would make the decision to pull the drive-up window but to restrict someone in the downtown area, we're shooting ourselves in the foot.

Christiansen closed it to abutter comments and went into executive session. Christiansen commented at this point, there are no clients for this property. We don't know if there will be a drive-thru restaurant but the regulation allows for a restaurant and a drive-thru is part of a restaurant business. Stevens agreed, there is no guarantee that that would be the use of the property but they wanted that option so it was granted as it's allowed. The Town Center District p. 15-17 of the zoning and land use ordinance. The chart shows the various uses; permitted, not permitted and allowed by special exception. The residents voted at the Town meeting to establish this district and what it was comprised of and it allowed restaurants in the Town Center Zone so to say it's not an allowed use is not true. It is a permitted use. Stevens invited residents to come to the planning office during the week and view the site plan because there are many inaccuracies with what Mr. Lagassa pointed out in his statement. Starting with #1 this lot is not ideal for development with poorly drained soils. There is no development within any poorly drained soils on the property; all setbacks have been met; there's an approval for a septic system by NHDES, many of these assertions can be disproven by viewing the plan. There is also an extensive landscape plan for the property so to say the Board took no consideration in addressing that, is non-factual. Some are opinions; there are more assertions here than facts. The Town Planner is here on Wednesdays and anyone can see him and he can review the plan with you. It's an approved use, the property owner bought the property knowing what the allowed uses are and he should be able to proceed with the project.

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Christiansen re-opened the abutters portion due to a late arrival. Frizzell was concerned with his children's safety due to more traffic in the area. He loves the proposal, the building, it's a great thing but is worried about the drive-thru. The main concern are the kids in the neighborhood. If there is a drive-thru, really make sure there is a right turn only sign. My son plays street hockey and rides his bike and I'm concerned he'll be hit by a car; people fly by there.

Stevens reiterated there are a number of inaccuracies in the statement that Mr. Lagassa prepared. That was one of the requirements of site plan approval was that traffic will turn right out of the driveway to the signalized intersection. Frizzell said the developer also said they designed CVS and people aren't supposed to cut through to go to Wal-Mart but they do. People will turn left if they want to turn left and behind every rolling ball is a child. Christian repeated that the developer at this time does not have clients.

L. Dow is not happy about another restaurant going in. She works hard (kills herself there) and hates to see food go in there. It's a small town and it's not enough for everybody; you don't need a grease trap for a bank. Christiansen said it could be a nail facility or hairdressing facility. Stevens said we can't prohibit business or restrain trade. Someone said yes you can. Stevens replied no you can't and that would be in Superior Court if the developer sued.

Lagassa insisted that his testimony was accurate. How is the 25' setback by the drive-thru at the retaining wall met? How is a drive-thru a pedestrian scale? Restaurants may go in there and he doesn't object to that but he objects to a drive-thru restaurant that will advertise out on Rte. 125 and vehicles and motorcycles come speeding onto Crawley Falls Road. There is no access from Rte. 125 and if there were, this wouldn't be an issue. The district is designed to protect and encourage residential uses and this is contrary to that. Stevens replied that he was misreading the ordinance. The ordinance says it's pedestrian friendly which is why the Town specifically excluded about 8 different uses; restaurants are permitted and are pedestrian friendly in a neighborhood commercial zone.

Stevens highlighted excluded activities and businesses in the Town Center Zone (Zoning Ordinance-Table p. 15-17 on file): Overnight & day camps, vacation resorts, recreational camping, tenting, hotels, motels, recreational camping, commercial farming, filling stations, service stations, motor vehicle dealerships, repair garages, body shops, paint shops, kennels, airport, runways, administrative buildings, hangers, adult uses, self-storage and warehousing are all excluded. Lagassa commented that argument is weak. I can see where adult businesses are not pedestrian friendly but if you're going to try and say that all those things are not pedestrian friendly and everything that is allowed by definition is pedestrian friendly, that doesn't make sense. Stevens commented that's probably what a Superior Court Judge can determine. Lagassa replied they may have too. Lagassa emphasized that this zone is different than the commercial zone. If you wanted to allow any commercial business listed on that list there then why separate this out into a zone that's supposed to give preference and concern for residential uses. I didn't hear anyone on the Planning Board express concern over the residential uses there.

Lagassa commented that the lot had been prematurely cleared a couple of years ago and asked if the owner that did it was the member on the Planning Board. Stevens addressed it saying the Planning Board has jurisdiction over site development. The property owner came in and cleared that in violation of the Town ordinance. The Planning Board has no power to take him to court but the Board of Selectmen does and they did issue a cease and desist to stop the clearing and removal of material from the site. The Planning Board didn't condone it, they don't have that jurisdiction. The Planning Board member who originally owned it, sold it and the new owner is the one that cleared it.

Lagassa continued the proposed developer owns a property over the line in Kingston similar to this and it has a Dunkin Donuts and he might have an in with Dunkin Donuts. What if it's a Wendy's or a Taco Bell? They won't hesitate to turn in there. Stevens said any change to the plan due to scope of business or size of building, volume of parking spaces etc. would have to come back for complete site plan review. Nobody can just put up a building twice the size proposed. Lagassa said so anything different from two restaurants and a bank or retail establishment? Stevens replied the basic types of uses can change minutely but you can't combine them and put in one large restaurant. Lagassa reiterated it's not precluded in the beginning and a drive-thru restaurant is not precluded; they can come back to the Board and ask permission to change the plan and do what they want. Stevens said anyone can come back with a new site plan but you

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have to come back in with new engineering, everything. Lagassa said my final statement is all I have asked is that the Planning Board permanently prohibit the construction of a drive thru restaurant there, period. Everyone in the neighborhood would be satisfied with that and abutter's have rights too. Christiansen closed the abutter's comment portion and went back into executive session.

Artimovich asked about the requirements for an appeal process that the applicant needs to meet or not meet, are there no requirements other than the Planning Board didn't act in good faith? Stevens said the appeal is for the decision the Board made so you'd have to find the Planning Board erred in their decision or were contrary to the spirit and intent of the ordinance.

Christiansen asked Artimovich if he denies or accepts? Artimovich felt that there wasn't enough evidence to suggest that the Planning Board acted incorrectly and therefore:

- Artimovich voted - DENIAL.
- Cowie voted – DENIAL for the same reason.
- Stevens voted – DENIAL for the same reason.
- Gilbert – Had some concerns. The intent of the center was not for people to be at each other for what we are doing here. Abutters are against having a drive-thru put there. It's easy for us to recommend to the Planning Board that a drive through restaurant not be put there. Gilbert didn't believe the traffic study was thorough; it shows an issue with traffic already. Stevens disagreed. Gilbert continued that he didn't want to take anyone's livelihood away. Stevens commented that's a dangerous slope to go down as a Town Official to put the Town in legal jeopardy. If that's how you are going to vote, I would put that in the record. Gilbert continued there's no commitment on what's going to be put on that lot. The concerns are having a drive thru restaurant being put there and that has to be taken into consideration. Voted to ACCEPT.
- Christiansen – This project has no clients yet. The citizens voted for the Town Center District and approved what you see in the regulations. My vote is to DENY (DENIAL).

Board's vote was four to one—four denials to the appeal and one in favor of the appeal. Appeal was denied.

Stevens suggested again that abutters come see Glenn and review the site plan. Glenn is in the office on Wednesdays and also encouraged resident attendance at Planning Board meetings to review any proposed zoning amendments, which they start working on in the fall every year in preparation for the vote at Town meeting.

**7:00 pm:** Applicant & Owner: Brian and Jessica Kenerson, Trustees of D & H Realty Trust; owners of BCK Excavation, LLC, request a variance from the following: Article III, Sections 300.002.001.005A: 125' building setback from edge of pavement; 300.002.001.005B: 50' parking area setback from edge of pavement; 300.002.001.005C: 50' maintenance of a vegetative strip along the road frontage; 300.002.001.005G: 75' building setback from state right of way. Article IV, Sections: 400.005.007: 4,000 sq. ft. septic reserve area; 400.006.003.001: 75' setback between well and sewage disposal area; Article VII, Sections 700.002.006.001, Buffer Provisions: 100' from very poorly drained soils; 700.002.006.005: no removal of vegetation/disturbance of soil within 50' of very poorly drained soil and within 25' of poorly drained soil. Property is located at 388 Route 125, Brentwood, NH 03833 in the commercial/industrial zone referenced by tax map 208.016.000.

Present: Applicant Brian & Jessica Kenerson, Attorney Kevin Baum of Hoeffle, Phoenix, Gormley & Roberts, PLLC; and JJ McBride of Emanuel Engineering. Abutters Present: Norman Garside.

Christensen mentioned that this request for waivers was originally approved in 1998. Baum representing the Kenerson's presented. The previously approved plan was approved by the Zoning Board and Planning Board in 1998, a 4,256 square foot retail/office building. That is what we're requesting again. It was approved in 1998, it was never constructed and the approvals have lapsed. This is basically the same proposal, same building, same general layout of the driveway and lot. A couple of minor changes affected our request for relief and some of the ordinance language has changed. Since then,

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Route 125 was widened and repaved. The wetlands were re-delineated and have actually been reduced; decreased. The only change to the layout is that now the plan squares off the back corner of the lot. The important change is not to the layout but is the use of permeable pavement to the sides and rear of the building. There is still no direct impact to the wetlands, as in 1998 but there are impacts to the wetland buffers. To mitigate that and to reduce impervious surface and provide stormwater treatment on site, pervious pavement is proposed. The only other small change is the reserve area for the septic as it's been reduced it more area for pervious pavement, reduce the runoff and treatment on site through that pavement. There is a list of variances, all basically the same variances approved in 1998. They've changed some in part, Hydric A and Hydric B are now Very Poorly Drained and Poorly Drained but it's basically the same relief. The purple area on the colored plan, these are the setbacks. Almost nothing can be built on this property without relief from the setbacks. Keeping sufficient distance from the back property and the wetlands, pushed the building up and pavement up. Even if we moved it back, there is no commercial use that can be done here without zoning relief; narrow width lot and wetlands.

They are seeking relief from the following:

**EXHIBIT A  
TO VARIANCE APPLICATION  
REQUESTED RELIEF**

<b><u>Ordinance Section</u></b>	<b><u>Page</u></b>	<b><u>Required</u></b>	<b><u>Proposed</u></b>	<b><u>Comment</u></b>
300.002.001.005A Building setback from edge of pavement	11	125'	92'	100' building setback granted by ZBA in 1998. Route 125 right of way has been repaved and expanded.
300.002.001.005B Parking area setback from edge of pavement	11	50'	42'	Route 125 right of way has been repaved and expanded. Parking spaces are 62' from pavement.
300.002.001.005C Landscaped, vegetative strip along road	11	50'	42'	Consistent with prior/existing conditions.
300.002.001.005G Building setback from State right-of-way	12	75	69.1	70' building setback granted by ZBA in 1998. Route 125 right of way has been repaved and expanded.
400.005.007 Septic reserve area	32	4,000 sq. ft.	225 sq. ft.	Complies with NHDES requirements.
400.006.003.001 Distance between sewage disposal area and well	34	75'	62.8	Complies with NHDES requirements. Existing well is 75' from proposed leach field.
700.002.006.001 Wetland buffer	79	100' (v. poorly drained soils) 50' (poorly drained soils)	50.4' (building) 10.4 (parking)	Greater relief granted in 1998. Proposing permeable pavement to mitigate impacts.
700.002.006.005 No disturb area	79	50' (v. poorly drained soils) 25' (poorly drained soils)	50.4' (building) 10.4 (parking)	Greater relief granted in 1998. Proposing permeable pavement to mitigate impacts.

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This would be replacing the old Army Navy Store and the site would have more vegetation than what was there. The distance between the sewer disposal and the well; it is more than 75 feet from the leach field but because the ordinance refers to the sewage disposal area as a whole it's only 62.8 feet so seeking relief there. Relief from both building and parking for the wetland buffer and also a no disturb area, part of the wetland buffer, seeking relief from that as well.

Artimovich asked what the setback of the Army Navy Store was? Baum responded this is farther back from the road; the Army Navy store is shown here (front) and the proposed building is going in the exact same location (behind where the Army Navy store was (*plan shown with old store defined*)).



**EXHIBIT**  
**1.6.**

Artimovich asked if there were numbers, to scale, off of the plan. Baum commented McBride scaled it off, it used to be 60' and now it's 92' roughly (front setback from road). Stevens added there were no setback requirements in the late 80's and then there was concern with Rte. 125, which could be widened and land taken, so the zoning regulations were changed to 125' (front setback). This would be viewed differently if it was vacant property but it's had grandfathered uses there. They have the right to replace the original structure with the footprint of the structure but this would be a great improvement. Baum said the goal was not to replace what was there but to improve the site and have a more usable commercial space. Stevens commented on the lack of septic on that site; the reserve area, people replace in kind. Baum said the reserve area being used does meet the State requirements and acceptable to NHDES. Stevens noted that the State has zero buffer setback to wetlands so this is offering less than what Brentwood would ask for on a vacant property but it's more than the State.

McBride explained porous pavement; there are voids in the top layer so stormwater goes immediately through. It's a courser aggregate with stickier asphalt so it stays together without falling apart. Once it goes through that, there's about 12" of sand which filters it and then there is more coarse material where filtered stormwater will infiltrate into the ground or if there's a lot, it will drain out through underdrains where the treated water will filter out.

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Baum said it is still a non-conforming lot but they need relief for the building and the parking. The Planning Board reviewed this once and continued us to seek the relief needed here; it's in the site plan process.

Garside asked about the purple area around the building, is it hot top? There's a pile of asphalt on site. Baum replied that's the pervious pavement. The front parking is regular asphalt in the front, the gray and all the purple is the pervious pavement; porous pavement.

B. Kenerson said the asphalt was hauled in and will be hauled back out as we are doing the porous pavement now. Garside asked about the pavement and which way is the water supposed to go. B. Kenerson said the water drains down through the pavement into the ground and there are also catch basins to catch it. Garside was concerned about oil etc. leaching down through it. J. Kenerson added everything on site will be hauled off and this new system is what we're planning on doing. B. Kenerson responded to Garside that it's actual pavement but it's thicker aggregate and it's stickier and if you watch a video of someone dumping water on it, it pours right through the ground.

Baum said the criteria is all in the memorandum. The Board voted on the 8 variances requested: (see table on p. 4)

1. Artimovich – Yea
2. Cowie - Yea
3. Stevens – Yea
4. Gilbert – Yea
5. Christiansen – Yea

Christiansen stated everything is approved.

Motion by Cowie, 2<sup>nd</sup> by Stevens, to recess at approximately 8:12 pm so Bickum could make copies of the approval.

Motion by Stevens, 2<sup>nd</sup> by Gilbert, to come out of recess at approximately 8:16 pm. Copies of the approval (notice of decision), were given to Attorney Kevin Baum and Jessica Kenerson.

### **Board Business:**

Motion made by Cowie, 2<sup>nd</sup> by Stevens, to re-appoint Christiansen as Chair. All were in favor with Christiansen abstaining. Motion carried.

Motion made by Artimovich, 2<sup>nd</sup> by Cowie, to approve the minutes from February 10<sup>th</sup>, 2020 as presented. All were in favor with Gilbert and Stevens abstaining. Motion carried.

Motion made by Cowie, 2<sup>nd</sup> by Artimovich, to approve the minutes from May 11<sup>th</sup>, 2020 as presented. All were in favor with Cowie and Gilbert abstaining. Motion carried.

Motion made by Cowie, 2<sup>nd</sup> by Artimovich, to adjourn at approximately 8:20 pm. All were in favor. Motion carried.

Respectfully submitted,  
Andrea Bickum,  
Administrative Assistant,  
Brentwood Zoning Board of Adjustment

Attached: *Testimony of George Lagassa to the Brentwood Zoning Board August 10, 2020.*



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### TESTIMONY OF GEORGE K. LAGASSA to the Brentwood Zoning Board August 10, 2020

I am George Lagassa, owner with my wife of 163 Crawley Falls Road. We have owned this property for fifteen years. When we purchased it from Fannie Mae, it could best be described as derelict, with a number of abandoned vehicles that had to be removed and a barn stuffed to the gills with junk and various hazardous substances. 18 months later, after installing a new roof, a new furnace, a new well pump, a new water filtration system, a remodeled kitchen, and two new bathrooms and a complete repaint job, we rented to our first tenants. We thus helped to "kick off" the then recently established Town Center District. Since then we have been good citizens, always paying taxes on time and on two separate occasions cooperating with the Mary E. Bartlett Memorial Library and incurring thousands of dollars of expenses to remove trees on the edge of our lot that were posing a hazard to the library building.

I am here this evening as an abutter to 154 Crawley Falls Road to state my case for my appeal of the June 18 decision of the Planning Board approving development of that property with a 6,000 s.f. commercial building for use, in part, as a drive-thru restaurant. I believe that that use is too intensive and inappropriate given its location in the heart of Brentwood's Town Center Zone 1 district.

Generally, my appeal is based on the stated intent of the Town Center District at Section 300.002.004 of the Brentwood Zoning Ordinance:

*"The intent of this district is to provide limited commercial, institutional, professional, and personal service uses in the center of Brentwood in a way that does not create land use conflicts with established residential uses. The district is intended to enhance the Town of Brentwood by providing an area of town which encourages new and existing residential uses as well as enterprises providing community services and to preserve and enhance elements of the cultural and architectural history of the Town. The intent also is to encourage uses suitable to a pedestrian scale."*

I will show in this testimony, that the planning board approval imposes virtually no limit on this proposed commercial development. Even the limited hours of operation from 6 AM to 11 PM are stated as subject to change by the Board "if {these} hours don't work for the lessee." (PB Minutes, 6/18/2020) The increased truck and automobile traffic on Crawley Falls Road creates obvious land use conflicts with the existing residential uses and under no view of reality can a drive thru-restaurant be considered "suitable to a pedestrian scale." The Planning Board manifestly failed to comply with the Brentwood Zoning ordinance, as currently written, and its decision should be overturned and remanded to them for reconsideration.

I offer the following five points in support of my appeal.

**First, the Planning Board has been consistently biased in support of this project** from beginning to end and has granted no concession whatsoever to the abutters, many of whom oppose the project as approved, but would offer their support if a few modifications were made to the proposal, consistent with the intent of the Town Center District zone. As evidence of this bias, I cite four facts:

1. At the initial conceptual design meeting in January the developer's engineer prefaced his presentation with the observation that the subject lot contained unique features that presented serious constraints on development, and that the Board would have to make some compromises in order to usher this development to fruition. He was right on both counts. This lot is by no

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means ideal for development, given its poorly drained soils and non-existent access to Route 125, its chief source of potential business customers. He was right also that the Board would need to make compromises, which they seemed all too willing to make.

2. At the June 18 hearing, the concerns raised in a memo to the board by an alternate board member were only mentioned dismissively and in passing toward the end of the meeting. (The Board Meeting Minutes read: "Stevens noted a memo on file from alternate Brian West who had concerns about traffic noise.") But Mr. West's memo says far more than that: "I agree with Glen's assessment regarding the proposed site use not being in accordance with the intent of not creating conflicts with established residential uses. This parcel of land is restricted by both Commercial and Town Center Zone requirements. The hours of 6:00 AM to 11:00 PM are especially an issue. Increased traffic will result and will not enhance the Town Center Zone as should be the intent."
3. During the hearings and the site walk, board members (including the chair) repeatedly stated that the property was located in the commercial zone, as if there were no such thing as the Town Center Zone. Board member Hamilton indicated that he didn't like the Town Center and another (Mr. Kennedy) indicated his intent to review it in the fall with an eye toward "cleaning it up." Although this is a clear admission that the proposed development is incompatible with the existing zoning (otherwise, why clean it up?), a suggestion by one abutter (Mr. Tufts) that consideration of this project be postponed until after that review is completed was rejected as unfair to the rights of the owner.
4. The Board's bias was also made abundantly clear to me early on when I complained that the subject property had been cleared without any notice to abutters. The Planning Board's response was an indignant defense of the rights of the property owners to do as they please with their land, conveniently ignoring the requirements of the Town of Brentwood Site Plan Review Regulations which clearly states: "A site plan review application must be made and approved . . . before any construction, land clearing or building development is begun." (See Site Plan Regulations, Section 4.1.2)

**Second, despite early concerns by abutters, the proposal for development here has become more intensive over time.** At the January conceptual design hearing, the developer's proposal to construct two buildings totaling 4,200 s.f. met with overwhelming opposition. The general sentiment of those in attendance, including the Town Planner, was that two buildings and especially the drive thru was excessive. Yet after four months of private consultation with town representatives, the developer came back in May with plans for a more intensive use of this property, including a 6,000 s.f. building, with two grease traps and a built-up septic/leech field design having a final elevation 12' above the base elevation of the proposed building. To accomplish such intensive usage, the site plan squeezes the entire development into a small envelope at the northerly end of the property, violating the requirements of the Town's site plan regulations which require the inclusion of appropriate buffer areas between commercial lots. "These buffer zones shall not be less than twenty-five (25) feet" and "no parking shall be located within any part of the buffer zone." (See Site Plan Regulations, Section 9.14 A.) The entire northeast corner of the drive-thru driveway (including a retaining wall), and the bulk of the built up leach field are within this set-back area, a problem which would be eliminated by shrinking the building, moving it or complying with the intent of the Town Center District and eliminating a drive-thru restaurant. Regardless, as approved, the proposal can hardly be considered a limited commercial development compliant with the intent of the Town Center District.



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**Third, the planning board has refused to mitigate the impact of this development on existing residential uses as required by the zoning ordinance.** The proposed development of a 6,000 s.f. commercial building containing a drive thru restaurant with exposure to busy Rte. 125 but vehicular access limited to Crawley Falls Rd. will increase traffic dramatically in an otherwise residential neighborhood. Not only will there be truck traffic for delivery of commercial supplies (which does not currently occur on Crawley Falls Road) but the traffic analysis presented by the project's own engineer indicated that customer traffic at the site would increase from an estimated ten trips per day per home to morning peak hour visits of 204.62/hour and afternoon peak hour visits of 205.67/hour. Disregarding the increased traffic that would occur during non-peak hours this marks a significant increase in the traffic rate typical of a residential district. Although Town Planner Greenwood stated this quite emphatically during the June 18 meeting, his concerns were simply dismissed. As one board member (Kennedy) said: "Just because you are armed with this information doesn't mean you can do anything about it. It cannot be mitigated." While was persuasive to the board, I disagree. Using the traffic statistics provided by the developer, elimination of the drive thru restaurant component would reduce predicted morning peak hour trips to approximately 121 trips and afternoon peak hour trips to 149. Reducing the scale of the building to the originally proposed 4,200 s.f. with one restaurant and one retail use would lower this to a much more tolerable peak hour trip frequency of 97 in the morning and 109 in the afternoon. This is the type of analysis and mitigation that planning boards should be expected to undertake. But this Planning Board said their hands were tied and they could not impose such a burden on a private landowner. So, if you are wondering if the development as approved "creates land use conflicts with existing residential uses" look no further.

**Fourth, from the start I and other abutters asked for increased screening or landscaping to soften the impact of this intense development in the Town Center District.** When the developer came back in May with their now expanded proposal, this time it included a professional landscape plan which, while an improvement over the complete absence of landscaping, provides for no screening or landscaping on the prematurely cleared southerly end of the lot. Fencing and additional landscaping here were rejected out of hand by the planning board, despite the requirement in the Site Plan Regulations that landscaped treatments are required for side and rear yards for all proposals (See Site Plan Regulations, Section 9.14 B.3). Especially given the premature clearing of the lot, the Planning Board should have required screening in the southerly portion of the lot, given its location in the Town Center District. During the hearings the board repeatedly raised doubts about their authority to impose such conditions despite Section 6 of the Town's Site Plan Review Regulations which states: "The Planning Board will require that adequate provisions be made by the owner or his agent for appropriate buffers that shall be maintained or installed to screen the use from neighboring properties" specifically including landscape treatment as appropriate or fencing (something that is quite visible at the developer's restaurant just two miles to the south in Kingston.)

**Fifth, to justify its clear advocacy for this development, the planning board relied on a fundamentally flawed understanding of planning, as defined by New Hampshire statutes.** During the course of the hearings, board members repeatedly stated that their planning duties are to "balance" the conflicting interest of the abutters with the "rights" of the property owner. One member argued that this is most compatible with the free market. Another member even stated that "it has to be feasible for the applicant to develop the property." Really? Is it now the duty of planning boards to prepare feasibility studies of proposed developments? The purpose of planning and zoning in NH is stated at NH RSA 672 (Section 672.1. II. and III.) which states: "Zoning, subdivision regulations and related regulations are a legislative tool that enables municipal government to meet more effectively the

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demands of evolving and growing communities. Proper regulations enhance the public health, safety, and general welfare and encourage the appropriate and wise use of land.” While the word regulation appears multiple times, there is no reference to the profitability of a proposed development or any duty for municipal planners to assure project feasibility in the free market. In fact, quite the opposite is stated at VI: “It is the policy of this state that competition and enterprise may be so displaced or limited by municipalities in the exercise of the power and authority provided in this title as may be necessary to carry out the purposes of this title.”

So I ask the Zoning Board to revoke the approval of the proposed development at 154 Crawley Falls Road and send it back to the Planning Board for reconsideration to determine a use that is appropriately limited and compatible with the stated intent of the Town Center District as it exists today.